

# Order

Michigan Supreme Court  
Lansing, Michigan

January 23, 2009

Marilyn Kelly,  
Chief Justice

137393

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 137393  
COA: 286369  
Genesee CC: 07-020162-FH

ASHLEY ELIZABETH OLIVER,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the August 19, 2008 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals, VACATE the sentence of the Genesee Circuit Court, and REMAND this case to the trial court for resentencing. The trial judge failed to offer any valid explanation justifying why he chose to sentence the defendant to 63 months above the sentencing guidelines maximum of 57 months. *People v Smith*, 482 Mich 292 (2008). On remand, the trial court shall articulate on the record why this level of departure is warranted or resentence the defendant either within the appropriate sentencing guidelines range or articulate on the record why a different level of departure is warranted.

WEAVER, J. (*dissenting*).

I dissent from the order remanding this case to the trial court. Applying the analysis of my partial dissent and partial concurrence in *People v Babcock*, 469 Mich 247, 280-284 (2003), I would affirm the trial court's decision. The trial court satisfied the requirement for "a substantial and compelling reason" for its departure from the sentencing guidelines, and its decision did not venture beyond the range of principled outcomes under the circumstances. See also my dissent in *People v Smith*, 482 Mich 292, 325-329 (2008).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 23, 2009

*Corbin R. Davis*

Clerk